Statement to the Montana Senate Judiciary Committee in Support of HB 362

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Mr. Chairman and Members of the committee,

My name is Dr. Richard Deichmann and I was the Chairman of Medicine at Memorial Medical Center in New Orleans during Hurricane Katrina. I am also the author of Code Blue: A Katrina Physician's Memoir which is the story of the ordeal our facility went through during this disaster. I continue to practice Internal Medicine in New Orleans at Ochsner Medical Center, a 650 physician, non-profit health care system, where I also serve as an Associate Medical Director. I have been asked to testify regarding my experience in providing health care during a declared emergency and to provide information supporting HB362 which limits liability for health care providers during a declared state of emergency.

I would first like to provide some background about the facility at which I will speak of. Memorial Medical Center was a 300 bed tertiary care hospital and was regarded as one of the top hospitals in the New Orleans region. At the time of the storm about 200 patients and an additional 2000 non- patients had evacuated to the facility. Of the approximately 500 physicians on staff about 25-30 physicians reported and we had significant deficits in coverage. There were no orthopedists despite a number of post op orthopedic patients nor were there any oncologists despite a bone marrow transplant patient in house. We had only one surgeon. We had several radiologists and pathologists.

Power from the electric grid was lost as the storm approached on Sunday. After the levees broke we quickly lost our generator power, all running water, and all communications. Temperatures soared to about 110 degrees inside the facility. 2200 people were stranded by 8 feet of water surrounding the entire complex. Hundreds of pets and animals also sought refuge in the parking garages to escape the flood. Human and animal urine and feces quickly accumulated throughout the facility. As conditions became increasingly desperate, security personnel began to leave the facility to save themselves or their loved ones. We passed out weapons to our maintenance workers and deputized them. The pathologists passed out scalpels and dissecting instruments to those holed up in the pathology department to fend off potential intruders and looters. The corridors were dark, foul smelling, and ominous.

All the while the staff cared for the patients and those non-patients who were becoming ill from the heat, stress, and squalor. Once we determined on Tuesday that we would evacuate the facility, a triage system was set up. We made the highest priority for evacuation those individuals who were obstetrical patients, patients in the medical and surgical intensive care units, and the neonates in the neonatal intensive care unit. We were able to successfully evacuate the 25 patients in these categories by late Tuesday night via helicopter. The next highest group of patients was those on dialysis or those

with unstable cardiac or pulmonary diseases. Patients with terminal illnesses who had requested that no heroic measures be performed were triaged to be evacuated last. Despite our staff's best efforts, a number of deaths occurred and many others suffered a great deal of physical and emotional suffering prior to the complete evacuation of the facility.

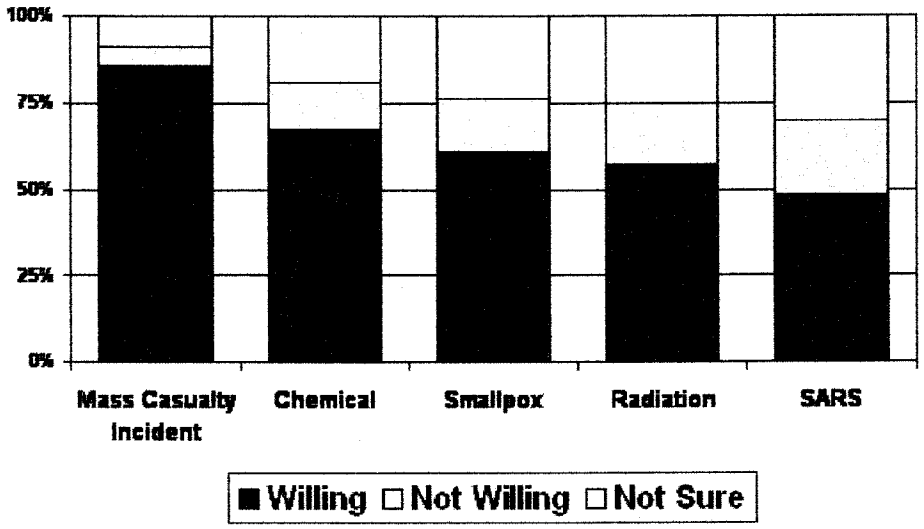
Disasters are uniformly characterized by numerous bad outcomes. Some of the many bad outcomes at our facility included not only the deaths, but also the emotional trauma of the ordeal on everyone involved. Other such events included many individuals who were evacuated out of necessity without their family members or pets with them. Some were evacuated to government staging areas where they suffered additional traumas. Others tried to find refuge at our facility during the flood but were turned away due to our already over-populated condition. Our community has learned a great deal from these bad outcomes and have implemented policies to help prevent some of these events from happening again. We also learned that our first responder health care providers demonstrated phenomenal dedication and selflessness in providing the best care they could under the circumstances and in lessening the loss of life and in alleviating suffering.

These first responders risked their own safety to provide service to their community. They frequently neglected the care of their family and loved ones to give to others during this crisis. They themselves suffered physical and emotional injuries. One of the anesthesiologists suffered a severe abscess on his finger requiring surgical drainage. A nurse suffered a collapsed lung requiring a chest tube as he loaded a patient onto a helicopter. I lost ten pounds from lack of food and nourishment during the five days. There was a very high incidence throughout the community of first responders of post traumatic stress disorder. Many of the nurses who were present chose to never return to nursing again due to the trauma of the whole event. Unfortunately, the aftermath of the disaster also included multiple claims made against health care provider first responders due to the many bad outcomes. Approximately 200 claims of medical malpractice were filed with the Louisiana Patient Compensation Fund following Katrina.

The community's best interests are clearly served by having policies in place to make it conducive for first responders to utilize their skills in limiting loss of life and in alleviating suffering during a declared disaster. Without their presence, the loss of life, rate of injury, and frequency of disability will be much greater. Studies have shown that the willingness of health care providers to report might only be 50% in certain types of disasters. (Fig. 1) Family concerns and concerns of personal safety are potent survival instincts in us all which may override the interest in reporting for service. The added emotional and financial costs of defending oneself against charges of negligence in service to one's community under such circumstances further discourages reporting for service in a disaster. Even if providers are later exonerated, considerable financial costs are incurred in defending against these charges and they may not be covered by malpractice insurance. Individuals who provide these services under a state of emergency should not be penalized for their decisions when those who do not report suffer no consequences. The standard of care during such a disaster is not the same standard which

would be expected during routine care. Policies to promote the delivery of care under emergency declarations are important pubic health measures which will improve the community's response to disasters.

Fig. 1. Willingness of healthcare providers to report to duty



N = 6,428 health care workers in 47 facilities.
Source: Qureshi K, Gershon RRM, Sherman MF, Straub T, Gebbie E, McCollum M, Erwin MJ, Morse SS. Health care workers' ability and willingness to report to duty during catastrophic disasters. Journal of Urban Health. 2005;82(3):378-388.